



February 16, 2005

HOUSE BILL No. 1002

DIGEST OF HB 1002 (Updated February 15, 2005 1:17 pm - DI 87)

Citations Affected: IC 4-2; IC 4-6; IC 4-15; IC 4-21.5; IC 10-11; IC 10-13; IC 15-1.5; IC 16-41; IC 27-2; IC 33-39; IC 34-24; IC 35-41; IC 35-44; noncode.

Synopsis: Inspector general and state ethics. Creates the office of the inspector general, and allows the commission to refer a matter for investigation by the inspector general. Prohibits state officers, employees, and special state appointees from accepting employment or other benefits or from participating in any decision that would constitute a conflict of interest. Mandates a one year waiting period before a former state officer, employee, or special state appointee may accept compensation as: (1) a lobbyist; or (2) an employee of an entity that the former state officer, employee, or special state appointee negotiated with, regulated, supervised, or licensed. Prohibits a former state officer, employee, or special state appointee from any involvement in a particular matter that the state officer, employee, or special state appointee personally and substantially participated in while a state officer, employee, or special state appointee. Allows the commission to: (1) issue reprimands; (2) terminate or suspend an employee or special state appointee; (3) recommend the impeachment of a state officer; and (4) bar a person from state employment; if the commission determines that the person has violated the ethics code or committed other misconduct. Makes: (1) unlawful retaliation against an employee for cooperating with the commission; or (2) interfering with an inspector general investigation; a Class A misdemeanor.
(Continued next page)

Effective: Upon passage.

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January 19, 2005, read first time and referred to Committee on Government and Regulatory Reform.
February 15, 2005, amended, reported — Do Pass.

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Digest Continued

Requires the inspector general to investigate wrongdoing affecting state government and establish a code of ethics. Allows the inspector general to bring, in a matter involving public misconduct, a: (1) civil action on behalf of the state if the attorney general does not do so; and (2) criminal prosecution on behalf of the state if a prosecuting attorney does not do so and a court of appeals judge authorizes the appointment of the inspector general as a special prosecutor. Specifies that the office of the inspector general is a law enforcement agency. Permits a prosecuting attorney to appoint the inspector general or a deputy inspector general as a deputy prosecuting attorney in a case involving public misconduct. Allows the inspector general to bring certain forfeiture actions. Makes official misconduct and profiteering from public service a Class D felony. Makes other changes and conforming amendments.

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February 16, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1002

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-2-6-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, and
3 unless the context clearly denotes otherwise:

4 (1) "Agency" means an authority, a board, a branch, a bureau, a
5 commission, a committee, a council, a department, a division, an
6 office, a service, or other instrumentality of the executive,
7 including the administrative, department of state government. The
8 term includes a body corporate and politic set up as an
9 instrumentality of the state ~~that chooses to be under the~~
10 ~~jurisdiction of the state ethics commission.~~ **and a private,**
11 **nonprofit, government related corporation.** The term does not
12 include any of the following:

13 (A) The judicial department of state government.

14 (B) The legislative department of state government.

15 (C) A state educational institution (as defined in

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- 1 IC 20-12-0.5-1).
- 2 (D) A political subdivision.
- 3 ~~(E) A private nonprofit government related corporation.~~
- 4 (2) "Appointing authority" means the chief administrative officer of an agency. The term does not include a state officer.
- 5
- 6 (3) "Assist" means to:
- 7 (A) help;
- 8 (B) aid;
- 9 (C) advise; or
- 10 (D) furnish information to;
- 11 a person. The term includes an offer to do any of the actions in
- 12 clauses (A) through (D).
- 13 (4) "Business relationship" means dealings of a person with an
- 14 agency seeking, obtaining, establishing, maintaining, or
- 15 implementing:
- 16 (A) a pecuniary interest in a contract or purchase with the
- 17 agency; or
- 18 (B) a license or permit requiring the exercise of judgment or
- 19 discretion by the agency.
- 20 (5) "Commission" refers to the state ethics commission created
- 21 under section 2 of this chapter.
- 22 (6) "Compensation" means any money, thing of value, or financial
- 23 benefit conferred on, or received by, any person in return for
- 24 services rendered, or for services to be rendered, whether by that
- 25 person or another.
- 26 (7) "Employee" means an individual, other than a state officer,
- 27 who is employed by an agency on a full-time, a part-time, a
- 28 temporary, an intermittent, or an hourly basis. The term includes
- 29 an individual who contracts with an agency for personal services.
- 30 ~~for more than thirty (30) hours a week for more than twenty-six~~
- 31 ~~(26) weeks during any one (1) year period.~~
- 32 (8) "Employer" means any person from whom a state officer or
- 33 employee or the officer's or employee's spouse received
- 34 compensation. For purposes of this chapter, a customer or client
- 35 of a self-employed individual in a sole proprietorship or a
- 36 professional practice is not considered to be an employer.
- 37 (9) "Financial interest" means an interest:
- 38 (A) in a purchase, sale, lease, contract, option, or other
- 39 transaction between an agency and any person; or
- 40 (B) involving property or services.
- 41 The term includes an interest arising from employment or
- 42 prospective employment for which negotiations have begun. The

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term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(10) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) ~~the information~~ is not in a public record, but if it were, would be confidential.

(11) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(12) "Political subdivision" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.

(13) "Property" has the meaning set forth in IC 35-41-1-23.

(14) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency.

(15) "Special state appointee" means a person who is:

(A) not a state officer or employee; and

(B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:

(i) is authorized by statute or executive order; and

(ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

(16) "State officer" means any of the following:

(A) The governor.

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(B) The lieutenant governor.

(C) The secretary of state.

(D) The auditor of state.

(E) The treasurer of state.

(F) The attorney general.

(G) The superintendent of public instruction.

(17) The masculine gender includes the masculine and feminine.

(18) The singular form of any noun includes the plural wherever appropriate.

SECTION 2. IC 4-2-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) There is created a state ethics commission.

(b) The commission is composed of five (5) members appointed by the governor.

(c) No more than three (3) commission members shall be of the same political party. A person who:

(1) holds an elected or appointed office of the state;

(2) is employed by the state; or

(3) is registered as a lobbyist under IC 2-7-2-1;

may not be a member of the commission. The governor shall designate one (1) member of the commission as the ~~chairman~~ **chairperson**. Each appointment to the commission is for a period of four (4) years. A vacancy shall be filled by the governor for the unexpired term.

(d) The ~~governor and state budget agency~~ **inspector general** shall provide ~~such~~ rooms and staff assistance ~~as the commission may require~~ **for the commission**.

SECTION 3. IC 4-2-6-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. The commission has jurisdiction over the following persons:

(1) A current or former state officer.

(2) A current or former employee.

(3) A person who has or had a business relationship with an agency.

(4) A **current or former** special state appointee.

SECTION 4. IC 4-2-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The commission may do any of the following:

(1) Upon a vote of four (4) members, ~~or upon the written request of the governor, initiate and conduct an investigation. refer any matter within the inspector general's authority to the inspector general for investigation.~~

(2) Receive and hear any complaint ~~which~~ **filed with the**

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commission by the inspector general that alleges a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, **an executive branch lobbyist (as defined in IC 4-2-7-1)**, or special state appointees.

(3) Obtain information and, upon a vote of four (4) members, compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued.

(4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, and special state appointees, including whether additional specific state officers or employees should be required to file a financial disclosure statement under section 8 of this chapter.

(5) Adopt rules under IC 4-22-2 to implement this chapter.

(6) Prescribe and provide forms for statements required to be filed under this chapter.

(7) Accept and file information:

(A) voluntarily supplied; and

(B) that exceeds the requirements of this chapter.

(8) Inspect financial disclosure forms.

(9) Notify persons who fail to file forms required under this chapter.

(10) Develop a filing, a coding, and an indexing system required by this chapter and IC 35-44-1-3(f).

(11) Conduct research.

(12) Prepare interpretive and educational materials and programs.

(b) The commission shall do the following:

(1) Act as an advisory body by issuing advisory opinions to interpret this chapter, the commission's rules, or any other statute or rule establishing standards of official conduct upon:

(A) request of:

(i) a state officer or a former state officer;

(ii) an employee or a former employee;

(iii) a person who has or had a business relationship with an agency; or

(iv) a special state appointee **or former special state appointee**; or

(B) motion of the commission.

(2) Conduct its proceedings in the following manner:

(A) When a complaint is filed with the commission, the

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commission may:

(i) reject, without further proceedings, a complaint that the commission considers frivolous or inconsequential;

(ii) reject, without further proceedings, a complaint that the commission is satisfied has been dealt with appropriately by an agency;

(iii) upon the vote of four (4) members, determine that the complaint does not allege facts sufficient to constitute a violation of this chapter or the code of ethics and dismiss the complaint; or

(iv) forward a copy of the complaint to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the appointing authority, or other appropriate person for action, and stay the commission's proceedings pending the other action.

(B) If a complaint is not disposed of under clause (A), a copy of the complaint shall be sent to the person alleged to have committed the violation.

(C) If the complaint is not disposed of under clause (A), ~~or when the commission initiates an investigation on its own motion or upon request of the governor, the commission shall~~ **may promptly investigate refer the alleged violation for additional investigation by the inspector general. If after the preliminary investigation, the commission finds by a majority vote that probable cause exists to support an alleged violation, it shall convene a public hearing on the matter within sixty (60) days after making the determination. The respondent shall be notified within fifteen (15) days of the commission's determination. The commission's evidence relating to an investigation is confidential until the earlier of:**

~~(i) the time the respondent is notified of the hearing; or~~

~~(ii) the time the respondent elects to have the records divulged;~~

proceedings are completed, a report has been issued by the commission detailing its findings of fact, and the case has been closed. However, the commission may acknowledge the existence and scope of an investigation or that the commission did not find probable cause to support an alleged violation.

(D) If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall

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be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

(E) After the hearing, the commission shall state its findings of fact. If the commission, based on competent and substantial evidence, finds by a majority vote that the respondent has violated this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public. ~~The report may make a recommendation for the sanctions to be imposed by the appointing authority or state officer for the violation; including:~~

- ~~(i) a letter of counseling;~~
- ~~(ii) a reprimand;~~
- ~~(iii) a suspension with or without pay; or~~
- ~~(iv) the dismissal of an employee.~~

(F) If the commission, based on competent and substantial evidence, finds by a majority vote a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees, the commission may also take any of the actions provided in section 12 of this chapter.

(G) The report required under clause (E) shall be presented to:

- (i) the respondent;
- (ii) the appointing authority or state officer of the employee, former employee, or special state appointee; and
- (iii) the governor.

(H) The commission may also forward the report to any of the following:

- (i) The prosecuting attorney of each county in which the violation occurred.
- (ii) The state board of accounts.
- (iii) The state personnel director.
- (iv) The attorney general.
- (v) A state officer.
- (vi) The appointing authority.
- (vii) Any other appropriate person.

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(I) If the commission finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

(3) Review all conflict of interest disclosures received by the commission under IC 35-44-1-3, maintain an index of conflict of interest those disclosures, received by the commission under IC 35-44-1-3, and issue advisory opinions and screening procedures as set forth in section 9 of this chapter.

(c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the commission concerning the case of a respondent that are not confidential under ~~subsection (b)(2)(C)~~ **IC 5-14-3-4(b)(2)(C)** shall be available for inspection and copying in accordance with IC 5-14-3.

SECTION 5. IC 4-2-6-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:**

(1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired;

(2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or

(3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals.

(b) A written advisory opinion issued by the inspector general or the individual's supervisor granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).

SECTION 6. IC 4-2-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8. (a) The following persons shall file a written financial disclosure statement:**

(1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.

(2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.

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(3) Any person who is the appointing authority of an agency.

(4) The director of each division of the department of administration.

(5) Any purchasing agent within the procurement division of the department of administration.

(6) An employee required to do so by rule adopted by the commission.

(b) The statement shall be filed with the commission as follows:

(1) Not later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).

(2) If the individual has not previously filed under subdivision (1) during the present calendar year and is filing as a candidate for a state office listed in subsection (a)(1), before filing a declaration of candidacy under IC 3-8-2 or IC 3-8-4-11, petition of nomination under IC 3-8-6, or declaration of intent to be a write-in candidate under IC 3-8-2-2.5, or before a certificate of nomination is filed under IC 3-8-7-8, in the case of a candidate for one (1) of the state offices (unless the statement has already been filed when required under IC 3-8-4-11).

(3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.

(4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.

The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or employee who leaves office or employment, the period since a previous statement was filed:

(1) The name and address of any person known:

(A) to have a business relationship with the agency of the state officer or employee or the office sought by the candidate; and

(B) from whom the state officer, candidate, or the employee, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).

(2) The location of all real property in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars (\$5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or

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the employee's net worth or the net worth of that individual's spouse or unemancipated children. An individual's primary personal residence need not be listed, unless it also serves as income property.

(3) The names and the nature of the business of the employers of the state officer, candidate, or the employee and that individual's spouse.

(4) The following information about any sole proprietorship owned or professional practice operated by the state officer, candidate, or the employee or that individual's spouse:

(A) The name of the sole proprietorship or professional practice.

(B) The nature of the business.

(C) Whether any clients are known to have had a business relationship with the agency of the state officer or employee or the office sought by the candidate.

(D) The name of any client or customer from whom the state officer, candidate, employee, or that individual's spouse received more than thirty-three percent (33%) of the state officer's, candidate's, employee's, or that individual's spouse's nonstate income in a year.

(5) The name of any partnership of which the state officer, candidate, or the employee or that individual's spouse is a member and the nature of the partnership's business.

(6) The name of any corporation (other than a church) of which the state officer, candidate, or the employee or that individual's spouse is an officer or a director and the nature of the corporation's business.

(7) The name of any corporation in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000).

However, if the stock is held in a blind trust, the name of the administrator of the trust must be disclosed on the statement instead of the name of the corporation. A time or demand deposit in a financial institution or insurance policy need not be listed.

(8) The name and address of the most recent former employer.

(9) Additional information that the person making the disclosure chooses to include.

Any such state officer, candidate, or employee may file an amended statement upon discovery of additional information required to be

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1 reported.

2 (d) A person who:

3 (1) fails to file a statement required by rule or this section in a
4 timely manner; or

5 (2) files a deficient statement;

6 upon a majority vote of the commission, is subject to a civil penalty at
7 a rate of not more than ten dollars (\$10) for each day the statement
8 remains delinquent or deficient. The maximum penalty under this
9 subsection is one thousand dollars (\$1,000).

10 (e) A person who intentionally or knowingly files a false statement
11 commits a Class A infraction.

12 SECTION 7. IC 4-2-6-9 IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE UPON PASSAGE]: Sec. 9. **(a) A state officer, or an**
14 **employee, or a special state appointee** may not participate in any
15 decision or vote of any kind in which the state officer or the employee;
16 or that individual's spouse or unemancipated children has a financial
17 interest. **if the state officer, employee, or special state appointee has**
18 **knowledge that any of the following has a financial interest in the**
19 **outcome of the matter:**

20 (1) The state officer, employee, or special state appointee.

21 (2) A member of the immediate family of the state officer,
22 employee, or special state appointee.

23 (3) A business organization in which the state officer,
24 employee, or special state appointee is serving as an officer, a
25 director, a trustee, a partner, or an employee.

26 (4) Any person or organization with whom the state officer,
27 employee, or special state appointee is negotiating or has an
28 arrangement concerning prospective employment.

29 (b) A state officer, an employee, or a special state appointee who
30 identifies a potential conflict of interest shall notify the person's
31 appointing authority and seek an advisory opinion from the
32 commission by filing a written description detailing the nature and
33 circumstances of the particular matter and making full disclosure
34 of any related financial interest in the matter. The commission
35 shall:

36 (1) with the approval of the appointing authority, assign the
37 particular matter to another person and implement all
38 necessary procedures to screen the state officer, employee, or
39 special state appointee seeking an advisory opinion from
40 involvement in the matter; or

41 (2) make a written determination that the interest is not so
42 substantial that the commission considers it likely to affect the

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integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

SECTION 8. IC 4-2-6-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to:

(1) a state officer, an employee, or a special state appointee who does not participate in or have official responsibility for any of the activities of the contracting agency, if:

(A) the contract is made after public notice or, where applicable, through competitive bidding;

(B) the state officer, employee, or special state appointee files with the commission a statement making full disclosure of all related financial interests in the contract;

(C) the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and

(D) in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the commission that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee; or

(2) a state officer, an employee, or a special state appointee who, acting in good faith, learns of an actual or prospective violation of the prohibition in subsection (a), if, not later than thirty (30) days after learning of the actual or prospective violation, the state officer, employee, or special state appointee:

(A) makes a full written disclosure of any financial interests to the contracting agency and the commission;

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1 **and**

2 **(B) terminates or disposes of the financial interest.**

3 SECTION 9. IC 4-2-6-11 IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) This section applies
5 only:

6 (1) to a former state officer or former employee; and

7 (2) during the period that is twelve (12) months after the date the
8 former state officer or former employee had responsibility for the
9 particular matter:

10 (b) As used in this section, "legislative matter" has the meaning set
11 forth in IC 2-2.1-3-1:

12 (c) (a) As used in this section, "particular matter" means:

13 (1) an application;

14 (2) a business transaction;

15 (3) a claim;

16 (4) a contract;

17 (5) a determination;

18 (6) an enforcement proceeding;

19 (7) an investigation;

20 (8) a judicial proceeding;

21 (9) a lawsuit;

22 (10) a license;

23 (11) an economic development project; or

24 (12) a public works project.

25 The term does not include the proposal or consideration of a legislative
26 matter or the proposal, consideration, adoption, or implementation of
27 a rule or an administrative policy or practice of general application.

28 (d) A former state officer or former employee may not represent or
29 assist a person regarding a particular matter involving a specific party
30 or parties:

31 (1) that was under consideration by the agency that was served by
32 the state officer or employee; and

33 (2) in which the officer or employee participated personally and
34 substantially through:

35 (A) a decision;

36 (B) an approval;

37 (C) a disapproval;

38 (D) a recommendation;

39 (E) giving advice;

40 (F) an investigation; or

41 (G) the substantial exercise of administrative discretion:

42 (e) An appointing authority or state officer of the agency that was

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served by the former state officer or former employee may waive application of this section if the appointing authority or state officer determines that representation or assistance of a former state officer or former employee is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the commission.

(f) This section does not prohibit an agency from contracting with a former state officer or employee to act on a matter on behalf of the agency.

(b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:

(1) as a lobbyist (as defined in IC 4-2-7-1);

(2) from an employer if the former state officer, employee, or special state appointee was:

(A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and

(B) in a position to make a discretionary decision affecting the:

(i) outcome of the negotiation; or

(ii) nature of the administration; or

(3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

(1) employment; or

(2) compensation;

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is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the inspector general certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

SECTION 10. IC 4-2-6-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11.5. (a) This section applies only to a person appointed after January 9, 2005.

(b) As used in this section, "advisory body" means a board, a commission, a committee, an authority, or a task force of the executive department that is authorized only to make nonbinding recommendations.

(c) Except as provided in subsection (d), a lobbyist (as defined in IC 4-2-7-1) may not serve as a member of a board, a commission, a committee, an authority, or a task force of the executive department.

(d) A lobbyist (as defined in IC 4-2-7-1) may serve as a member of an advisory body.

SECTION 11. IC 4-2-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. If the commission finds a violation of this chapter, a rule adopted under this chapter, or any other statute or rule governing official conduct of state officers, employees, or special state appointees in a proceeding under section 4 of this chapter, the commission may take any of the following actions:

- (1) Impose a civil penalty upon a respondent not to exceed ~~the greater of:~~
 - ~~(A)~~ three (3) times the value of any benefit received from the violation. ~~or~~
 - ~~(B)~~ ten thousand dollars (\$10,000).
- (2) Cancel a contract.
- (3) Bar a person from entering into a contract with any agency for a period specified by the commission. ~~The period specified by the~~

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commission may not exceed two (2) years from the date the action of the commission is effective.

(4) Order restitution or disgorgement.

(5) Reprimand, suspend, or terminate an employee or a special state appointee.

(6) Reprimand or recommend the impeachment of a state officer.

(7) Bar a person from future state employment as an employee or future appointment as a special state appointee.

SECTION 12. IC 4-2-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) ~~Subject to~~ **Except as provided in** subsection (b), a state officer, ~~or an employee,~~ **or a special state appointee** shall not retaliate or threaten to retaliate against an employee or a former employee because the employee or former employee did any of the following:

(1) Filed a complaint with the commission ~~or the inspector general.~~

(2) Provided information to the commission ~~or the inspector general.~~

(3) Testified at a commission proceeding.

~~(b) Notwithstanding subsection (a),~~ A state officer, ~~or an employee,~~ **or a special state appointee** may take appropriate action against an employee who took any of the actions listed in subsection (a) if the employee:

(1) did not act in good faith; or

(2) knowingly or recklessly provided false information or testimony to the commission.

(c) A person who violates this section is subject to action under section 12 of this chapter.

(d) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. In addition to any criminal penalty imposed under IC 35-50-3, a person who commits a misdemeanor under this section is subject to action under section 12 of this chapter.

SECTION 13. IC 4-2-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. **(a)** A person may not do any of the following:

(1) Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a commission proceeding or investigation **conducted by the inspector general** to do any of the following:

(A) Withhold or unreasonably delay the production of any

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testimony, information, document, or thing.

(B) Avoid legal process summoning the person to testify or supply evidence.

(C) Fail to appear at a proceeding or investigation to which the person has been summoned.

(D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

(2) Alter, damage, or remove a record, document, or thing except as permitted or required by law, with the intent to prevent the record, document, or thing from being produced or used in a commission proceeding or investigation **conducted by the inspector general.**

(3) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor.

SECTION 14. IC 4-2-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 7. The Inspector General

Sec. 1. The following definitions apply throughout this chapter:

(1) "Agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic established as an instrumentality of the state. The term does not include the following:

(A) The judicial department of state government.

(B) The legislative department of state government.

(C) A political subdivision (as defined in IC 4-2-6-1).

(2) "Business relationship" has the meaning set forth in IC 4-2-6-1.

(3) "Employee" means an individual who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(4) "Ethics commission" means the state ethics commission created by IC 4-2-6-2.

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(5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist by the state.

(6) "Person" has the meaning set forth in IC 4-2-6-1.

(7) "Special state appointee" has the meaning set forth in IC 4-2-6-1.

(8) "State officer" has the meaning set forth in IC 4-2-6-1.

Sec. 2. (a) There is established the office of the inspector general. The office of the inspector general consists of the inspector general, who is the director of the office, and an additional staff of deputy inspectors general, investigators, auditors, and clerical employees appointed by the inspector general as necessary to carry out the duties of the inspector general. The inspector general shall provide rooms and staff assistance for the ethics commission.

(b) The inspector general is responsible for addressing fraud, waste, abuse, and wrongdoing in agencies.

(c) The governor shall appoint the inspector general. The inspector general:

- (1) serves at the pleasure of the governor;
- (2) must be an attorney licensed to practice law in Indiana; and
- (3) is entitled to receive compensation set by the governor and approved by the budget agency.

The inspector general's compensation may not be reduced during the inspector general's continuance in office.

(d) Subject to the approval of the budget agency, the inspector general shall fix the salary of all other employees of the office of the inspector general.

Sec. 3. The inspector general shall do the following:

- (1) Initiate, supervise, and coordinate investigations.
- (2) Recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government.
- (3) Receive complaints alleging the following:
 - (A) A violation of the code of ethics.
 - (B) Bribery (IC 35-44-1-1).
 - (C) Official misconduct (IC 35-44-1-2).
 - (D) Conflict of interest (IC 35-44-1-3).
 - (E) Profiteering from public service (IC 35-44-1-7).
 - (F) A violation of the executive branch lobbying rules.
 - (G) A violation of a statute or rule relating to the purchase of goods or services by a current or former employee, state

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officer, special state appointee, lobbyist, or person who has a business relationship with an agency.

(4) If the inspector general has reasonable cause to believe that a crime has occurred or is occurring, report the suspected crime to:

(A) the governor; and

(B) appropriate state or federal law enforcement agencies and prosecuting authorities having jurisdiction over the matter.

(5) Adopt rules under IC 4-22-2 and section 5 of this chapter to implement a code of ethics.

(6) Ensure that every:

(A) employee;

(B) state officer;

(C) special state appointee; and

(D) person who has a business relationship with an agency; is properly trained in the code of ethics.

(7) Provide advice to an agency on developing, implementing, and enforcing policies and procedures to prevent or reduce the risk of fraudulent or wrongful acts within the agency.

(8) Recommend legislation to the governor and general assembly to strengthen public integrity laws.

Sec. 4. To carry out the duties described in section 3 of this chapter, the inspector general has the following powers:

(1) As part of an investigation, the inspector general may:

(A) administer oaths;

(B) examine witnesses under oath;

(C) issue subpoenas and subpoenas duces tecum; and

(D) examine the records, reports, audits, reviews, papers, books, recommendations, contracts, correspondence, or any other documents maintained by an agency.

(2) The inspector general may apply to a circuit or superior court for an order holding an individual in contempt of court if the individual refuses to give sworn testimony under a subpoena issued by the inspector general or otherwise disobeys a subpoena or subpoena duces tecum issued by the inspector general.

(3) The inspector general shall prepare a report summarizing the results of every investigation. The report is confidential in accordance with section 8 of this chapter.

(4) If the attorney general has elected not to file a civil action for the recovery of funds misappropriated, diverted, missing,

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or unlawfully gained, the inspector general may file a civil action for the recovery of the funds in accordance with section 6 of this chapter.

(5) The inspector general may prosecute a criminal matter as a special prosecuting attorney or special deputy prosecuting attorney in accordance with:

(A) section 7 of this chapter; or

(B) IC 33-39-2-6.

Sec. 5. (a) The inspector general shall adopt rules under IC 4-22-2 establishing a code of ethics for the conduct of state business. The code of ethics must be consistent with Indiana law.

(b) If the inspector general investigates and determines that there is specific and credible evidence that a current or former employee, a current or former state officer, a current or former special state appointee, or a person who has or had a business relationship with an agency has violated the code of ethics, the inspector general may:

(1) file a complaint with the ethics commission and represent the state in a public proceeding before the ethics commission as prescribed in IC 4-2-6-4; or

(2) file a complaint with the ethics commission and negotiate an agreed settlement for approval by the ethics commission according to its rules.

Sec. 6. (a) This section applies if the inspector general finds evidence of misfeasance, malfeasance, nonfeasance, misappropriation, fraud, or other misconduct that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business.

(b) If the inspector general finds evidence described in subsection (a), the inspector general shall certify a report of the matter to the attorney general and provide the attorney general with any relevant documents, transcripts, or written statements. Not later than one hundred eighty (180) days after receipt of the report from the inspector general, the attorney general shall do one (1) of the following:

(1) file a civil action (including an action upon a state officer's official bond) to secure for the state the recovery of funds misappropriated, diverted, missing, or unlawfully gained. Upon request of the attorney general, the inspector general shall assist the attorney general in the investigation, preparation, and prosecution of the civil action; or

(2) inform the inspector general that the attorney general does

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not intend to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. If the attorney general elects not to file a civil action, the attorney general shall return to the inspector general all documents and files initially provided by the inspector general.

(3) Inform the inspector general that the attorney general is diligently investigating the matter and after further investigation may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. However, if more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general, the attorney general loses the authority to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained and shall return to the inspector general all documents and files initially provided by the inspector general.

(c) If the inspector general has found evidence described in subsection (a) and reported to the attorney general under subsection (b) and:

- (1) the attorney general has elected under subsection (b)(2) not to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained; or
- (2) under subsection (b)(3) more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general under subsection (b) and the attorney general has not filed a civil action;

the inspector general may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

(d) If the inspector general has found evidence described in subsection (a), the inspector general may institute forfeiture proceedings under IC 34-24-2 in a court having jurisdiction in a county where property derived from or realized through the misappropriation, diversion, disappearance, or unlawful gain of state funds may be located, unless a prosecuting attorney has already instituted forfeiture proceedings against that property.

Sec. 7. (a) If the inspector general discovers evidence of criminal activity, the inspector general shall certify to the appropriate prosecuting attorney the following information:

- (1) The identity of any person who may be involved in the criminal activity.
- (2) The criminal statute that the inspector general believes has

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1 been violated.

2 In addition, the inspector general shall provide the prosecuting
3 attorney with any relevant documents, transcripts, or written
4 statements. If the prosecuting attorney decides to prosecute the
5 crime described in the information certified to the prosecuting
6 attorney, or any other related crimes, the inspector general shall
7 cooperate with the prosecuting attorney in the investigation and
8 prosecution of the case. Upon request of the prosecuting attorney,
9 the inspector general may participate on behalf of the state in any
10 resulting criminal trial.

11 (b) If:

12 (1) the prosecuting attorney to whom the inspector general
13 issues a certification under subsection (a):

14 (A) is disqualified from investigating or bringing a
15 criminal prosecution in the matter addressed in the
16 certification;

17 (B) does not file an information or seek an indictment not
18 later than one hundred eighty (180) days after the date on
19 which the inspector general certified the information to the
20 prosecuting attorney; or

21 (C) refers the case back to the inspector general; and

22 (2) the inspector general finds that there may be probable
23 cause to believe that a person identified in a certification
24 under subsection (a)(1) has violated a criminal statute
25 identified in a certification under subsection (a)(2);

26 the inspector general may request that the governor recommend
27 the inspector general be appointed as a special prosecuting
28 attorney under subsection (h) so that the inspector general may
29 prosecute the matter addressed in the certification.

30 (c) The governor may recommend the inspector general be
31 appointed as a special prosecuting attorney if:

32 (1) one (1) of the conditions set forth in subsection (b)(1)
33 relating to the prosecuting attorney is met; and

34 (2) the governor finds that the appointment of the inspector
35 general as a special prosecuting attorney is in the best
36 interests of justice.

37 (d) If the governor has recommended the appointment of the
38 inspector general as a special prosecuting attorney, the inspector
39 general shall file a notice with the chief judge of the court of
40 appeals, stating:

41 (1) that the governor has recommended that the inspector
42 general be appointed as a special prosecutor;

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(2) the name of the county in which the crime that the inspector general intends to prosecute is alleged to have been committed; and

(3) that the inspector general requests the chief judge to assign a court of appeals judge to determine whether the inspector general should be appointed as a special prosecuting attorney.

Upon receipt of the notice, the chief judge of the court of appeals shall assign a judge of the court of appeals from a district other than the district in which the crime is alleged to have been committed to determine whether the inspector general should be appointed as a special prosecuting attorney.

(e) The inspector general shall file a verified petition for appointment as a special prosecuting attorney with the court of appeals judge assigned under subsection (d). In the verified petition, the inspector general shall set forth why the inspector general should be appointed as a special prosecutor. The inspector general may support the verified petition by including relevant documents, transcripts, or written statements in support of the inspector general's position. The inspector general shall serve a copy of the verified petition, along with any supporting evidence, on the prosecuting attorney to whom the case was originally certified under subsection (a).

(f) The prosecuting attorney shall file a verified petition in support of or opposition to the inspector general's verified petition for appointment as a special prosecuting attorney not later than fifteen (15) days after receipt of the inspector general's verified petition for appointment as a special prosecuting attorney.

(g) Upon a showing of particularized need, the court of appeals judge may order the verified petitions filed by the inspector general and the prosecuting attorney to be confidential.

(h) After considering the verified petitions, the court of appeals judge may appoint the inspector general as a special prosecuting attorney if the judge finds that:

(1) one (1) of the conditions set forth in subsection (b)(1) is met; and

(2) appointment of the inspector general as a special prosecuting attorney is in the best interests of justice.

In making its determination under this subsection, the court of appeals judge shall consider only the arguments and evidence contained in the verified petitions.

(i) Except as provided in subsection (k), an inspector general

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1 appointed to serve as a special prosecuting attorney has the same
2 powers as the prosecuting attorney of the county. However, the
3 court of appeals judge shall:

4 (1) limit the scope of the inspector general's duties as a special
5 prosecuting attorney to include only the investigation or
6 prosecution of a particular case or particular grand jury
7 investigation, including any matter that reasonably results
8 from the investigation, prosecution, or grand jury
9 investigation; and

10 (2) establish the length of the inspector general's term as a
11 special prosecuting attorney.

12 If the inspector general's investigation or prosecution acquires a
13 broader scope or requires additional time to complete, the court of
14 appeals judge may at any time increase the scope of the inspector
15 general's duties or establish a longer term for the inspector general
16 to serve as a special prosecuting attorney.

17 (j) An inspector general appointed to serve as a special
18 prosecuting attorney may appoint one (1) or more deputy
19 inspectors general who are licensed to practice law in Indiana to
20 serve as a special deputy prosecuting attorney. A deputy inspector
21 general appointed to serve as a deputy prosecuting attorney is
22 subject to the same statutory restrictions and other restrictions
23 imposed on the inspector general who is appointed to serve as a
24 special prosecuting attorney, but otherwise has the same powers as
25 a deputy prosecuting attorney.

26 (k) An inspector general appointed to serve as a special
27 prosecuting attorney may bring a criminal charge only after
28 obtaining an indictment from a grand jury. An inspector general
29 appointed to serve as a special prosecuting attorney may not bring
30 a criminal charge by filing an information.

31 (l) The inspector general or a deputy inspector general who is
32 licensed to practice law in Indiana may serve as a special deputy
33 prosecuting attorney under IC 33-39-2-6.

34 Sec. 8. (a) As used in this section, "active investigation" means
35 an investigation that is being conducted with reasonable dispatch
36 and in the good faith belief that the investigation may result in the
37 filing of criminal charges or an administrative or civil action.

38 (b) The identity of any individual who discloses in good faith to
39 the inspector general information alleging a violation of a state or
40 federal statute, rule, regulation, or ordinance is confidential and
41 may not be disclosed to anyone other than the governor, the staff
42 of the office of the inspector general, or an authority to whom the

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investigation is subsequently referred or certified, unless:

- (1) the inspector general makes a written determination that it is in the public interest to disclose the individual's identity; or
- (2) the individual consents in writing to disclosure of the individual's identity.

(c) Information received by the inspector general in the inspector general's official capacity is confidential unless the information does not relate to an active investigation.

(d) Information received by the inspector general is not required to be produced in the course of discovery unless ordered by a court after a showing of:

- (1) particularized need; and
- (2) proof that the information requested cannot be obtained from any other source.

(e) Except as provided in subsection (f), a person who knowingly or intentionally discloses:

- (1) confidential information or records; or
- (2) the identity of a person whose identity is confidential under subsection (b);

commits unlawful disclosure of confidential information, a Class A misdemeanor.

(f) A person may disclose confidential information or records or the identity of a person whose identity is confidential under subsection (b) if the governor authorizes the disclosure of this information in the public interest.

SECTION 15. IC 4-6-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

(b) In no instance under this section shall the state or a state agency be required to file a bond.

(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

SECTION 16. IC 4-15-2-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 33. An appointing authority, ~~or his~~ **the appointing authority's** designee, ~~or the ethics commission~~ may, for disciplinary purposes, suspend without pay a

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1 regular employee in his division of the service for such a length of time
 2 as he considers the appointing authority, the appointing authority's
 3 designee, or the ethics commission considers appropriate, not
 4 exceeding thirty (30) days in any twelve (12) month period. With the
 5 approval of the director a regular employee may be suspended for a
 6 longer period pending the administrative investigation or trial of any
 7 charges against him. **the employee.** If the outcome of the charges or
 8 trial of any charges is favorable to the employee, the appointing
 9 authority shall reimburse the employee any lost wages and benefits for
 10 the suspension period less any wages the employee might have earned
 11 during the suspension period from other employment.

12 SECTION 17. IC 4-15-2-34 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 34. An appointing
 14 authority, ~~or his~~ **the appointing authority's** designee, ~~or the ethics~~
 15 **commission** may dismiss for cause any regular employee. ~~in his~~
 16 ~~division of the service.~~ No dismissal of a regular employee shall take
 17 effect, unless, at least thirty (30) days before the effective date of the
 18 dismissal, the appointing authority, ~~or his~~ **the appointing authority's**
 19 designee, ~~or the ethics commission~~ gives to the employee a written
 20 statement of the reasons for the dismissal and files a copy of the
 21 statement with the director. During the thirty (30) day notice period the
 22 employee shall be suspended without pay pending dismissal. The
 23 employee shall have an opportunity to file with the appointing authority
 24 **or the ethics commission** a written statement regarding the proposed
 25 dismissal, a copy of which shall be filed with the director. A regular
 26 employee who is dismissed shall have the right to appeal under section
 27 35 ~~or 35.5~~ of this chapter.

28 SECTION 18. IC 4-15-2-35 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 35. **(a) This**
 30 **section does not apply to an employee who has been suspended or**
 31 **terminated by the ethics commission.**

32 **(b)** Any regular employee may file a complaint if ~~his~~ **the**
 33 **employee's** status of employment is involuntarily changed or if ~~he~~ **the**
 34 **employee** deems conditions of employment to be unsatisfactory.
 35 However, the complaint procedure shall be initiated as soon as possible
 36 after the occurrence of the act or condition complained of and in no
 37 event shall be initiated more than thirty (30) calendar days after the
 38 employee is notified of a change in ~~his~~ **the** status of employment or
 39 after an unsatisfactory condition of employment is created. Failure to
 40 initiate the complaint procedure within ~~such~~ **this** time period shall
 41 render the complaint procedure unavailable to the employee. The
 42 following complaint procedure shall be followed:



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1 Step I: The complaint procedure shall be initiated by a discussion of
 2 the complaint by the employee and ~~his~~ **the employee's** immediate
 3 supervisor and, if a mutually satisfactory settlement has not been made
 4 within two (2) consecutive working days, ~~such~~ **the** complaint may be
 5 referred to Step II.

6 Step II: The complaint shall be reduced to writing and presented to
 7 the intermediate supervisor. If a mutually satisfactory settlement has
 8 not been reached within four (4) consecutive working days, such
 9 complaint may then be referred to the appointing authority.

10 Step III: The appointing authority or ~~his designated representative~~
 11 **the appointing authority's designee** shall hold ~~such~~ **hearings a**
 12 **hearing, if necessary,** and conduct ~~such~~ **investigations as he deems**
 13 **whatever investigation the appointing authority or the appointing**
 14 **authority's designee considers** necessary to render a decision. ~~and~~
 15 ~~shall make such~~ **The appointing authority or the appointing**
 16 **authority's designee must render a** decision in writing ~~within not~~
 17 **later than** ten (10) consecutive working business days ~~from the date~~
 18 **of the hearing, if applicable, or close of the investigation, whichever**
 19 **occurs later.**

20 ~~Should~~ **If** the appointing authority or ~~his designated representative~~
 21 **the appointing authority's designee does** not find in favor of the
 22 employee, the complaint may be submitted within fifteen (15) calendar
 23 days to the state personnel director. The director or ~~his~~ **the director's**
 24 designee shall review the complaint and render a decision ~~within not~~
 25 **later than** fifteen (15) calendar days **after the director or the**
 26 **director's designee receives the complaint.** If the decision is not
 27 agreeable to the employee, an appeal may be submitted by the
 28 employee in writing to the commission ~~no~~ **not** later than fifteen (15)
 29 calendar days from the date the employee has been given notice of the
 30 action taken by the personnel director or ~~his~~ **the director's** designee.
 31 After submission of the appeal, the commission shall, prior to
 32 rendering its decision, grant the appealing employee and the appointing
 33 authority a public hearing, with the right to be represented and to
 34 present evidence. With respect to all appeals, the commission shall
 35 render its decision within thirty (30) days after the date of the hearing
 36 on the appeal. If the commission finds that the action against the
 37 employee was taken on the basis of politics, religion, sex, age, race, or
 38 because of membership in an employee organization, the employee
 39 shall be reinstated ~~to his position~~ without loss of pay. In all other cases
 40 the appointing authority shall follow the recommendation of the
 41 commission, which may include reinstatement and payment of salary
 42 or wages lost by the employee, which may be mitigated by any wages

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the employee earned from other employment during a dismissed or suspended period.

If the recommendation of the commission is not agreeable to the employee, the employee, within fifteen (15) calendar days from receipt of the commission recommendation, may elect to submit the complaint to arbitration. The cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations, and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

SECTION 19. IC 4-15-2-35.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 35.5. (a) This section applies only to an employee who has been suspended or terminated by the ethics commission.**

(b) An employee who has been suspended or terminated by the ethics commission may request that the ethics commission reconsider its decision by filing a written petition for reconsideration with the ethics commission not later than fifteen (15) days after the date on which the employee was suspended or terminated. The employee must include in the petition for reconsideration a concise statement of the reasons that the employee believes that the termination or suspension was erroneous.

(c) After receipt of the petition for reconsideration, the ethics commission shall set the matter for hearing. At the hearing, the employee is entitled to the due process protections of IC 4-21.5, including the right to:

- (1) be represented by counsel;**
- (2) present relevant evidence; and**
- (3) cross-examine opposing witnesses.**

(d) The ethics commission shall rule on the petition for reconsideration not later than thirty (30) days from the date of the hearing. The ethics commission may:

- (1) affirm its decision to suspend or terminate the employee;**
- (2) modify its decision to suspend or terminate the employee**

by:

- (A) reducing the term of suspension; or**

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(B) vacating its order for termination and imposing a term of suspension; or

(3) vacate its order to suspend or terminate the employee.

(e) If the ethics commission vacates its order to suspend or terminate the employee under subsection (d)(3), the ethics commission may order the payment of all or part of the wages lost by the employee during the period of suspension or termination.

(f) Unless the ethics commission orders otherwise, the pendency of a petition for reinstatement does not stay the order for termination or suspension.

(g) An employee who has filed a petition for reconsideration may not file a second or subsequent petition for reconsideration.

(h) An employee who has been suspended or terminated by the ethics commission is not entitled to arbitration.

SECTION 20. IC 4-15-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Any employee may report in writing the existence of:

- (1) a violation of a federal law or regulation;
- (2) a violation of a state law or rule;
- (3) a violation of an ordinance of a political subdivision (as defined in IC 36-1-2-13); or
- (4) the misuse of public resources;

first to a supervisor or appointing authority, unless the supervisor or appointing authority is the person whom the employee believes is committing the violation or misuse of public resources. In that case, the employee may report the violation or misuse of public resources in writing to either the supervisor or appointing authority or to the state ethics commission and any official or agency entitled to receive a report from the state ethics commission under IC 4-2-6-4(b)(2)(G) or IC 4-2-6-4(b)(2)(H). If a good faith effort is not made to correct the problem within a reasonable time, the employee may submit a written report of the incident to any person, agency, or organization: **to a supervisor or to the inspector general.**

(b) For having made a report under subsection (a), the employee making the report may not:

- (1) be dismissed from employment;
- (2) have salary increases or employment related benefits withheld;
- (3) be transferred or reassigned;
- (4) be denied a promotion the employee otherwise would have received; or
- (5) be demoted.

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(c) Notwithstanding subsections (a) and (b), an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employee's appointing authority, ~~or the appointing authority's designee, or the ethics commission.~~ However, any state employee disciplined under this subsection is entitled to process an appeal of the disciplinary action under the procedure as set forth in IC 4-15-2-34 ~~and IC 4-15-2-35~~ **through IC 4-15-2-35.5.**

(d) An employer who **knowingly or intentionally** violates this section commits a Class A ~~infraction.~~ **misdemeanor.**

SECTION 21. IC 4-21.5-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) To qualify for review of a personnel action to which IC 4-15-2 applies, a person must comply with IC 4-15-2-35 **or IC 4-15-2-35.5.** To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

(1) States facts demonstrating that:

(A) the petitioner is a person to whom the order is specifically directed;

(B) the petitioner is aggrieved or adversely affected by the order; or

(C) the petitioner is entitled to review under any law.

(2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:

(A) the specific findings, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;

(B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and

(C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more

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1 additional issues.

2 (3) Is filed:

3 (A) if an order described in section 4, 5, 6(a)(1), or 6(a)(2) of
4 this chapter, with the ultimate authority for the agency issuing
5 the order within fifteen (15) days after the person is given
6 notice of the order or any longer period set by statute; or

7 (B) if a determination described in section 6(a)(3) or 6(a)(4)
8 of this chapter, with the office of Medicaid policy and
9 planning not more than one hundred eighty (180) days after
10 the hospital is provided notice of the determination.

11 The issuance of an amended notice of program reimbursement by
12 the office of Medicaid policy and planning does not extend the
13 time within which a hospital must file a petition for review from
14 the original notice of program reimbursement under clause (B),
15 except for matters that are the subject of the amended notice of
16 program reimbursement.

17 If the petition for review is denied, the petition shall be treated as a
18 petition for intervention in any review initiated under subsection (d).

19 (b) If an agency denies a petition for review under subsection (a)
20 and the petitioner is not allowed to intervene as a party in a proceeding
21 resulting from the grant of the petition for review of another person, the
22 agency shall serve a written notice on the petitioner that includes the
23 following:

24 (1) A statement that the petition for review is denied.

25 (2) A brief explanation of the available procedures and the time
26 limit for seeking administrative review of the denial under
27 subsection (c).

28 (c) An agency shall assign an administrative law judge to conduct
29 a preliminary hearing on the issue of whether a person is qualified
30 under subsection (a) to obtain review of an order when a person
31 requests reconsideration of the denial of review in a writing that:

32 (1) states facts demonstrating that the person filed a petition for
33 review of an order described in section 4, 5, or 6 of this chapter;

34 (2) states facts demonstrating that the person was denied review
35 without an evidentiary hearing; and

36 (3) is filed with the ultimate authority for the agency denying the
37 review within fifteen (15) days after the notice required by
38 subsection (b) was served on the petitioner.

39 Notice of the preliminary hearing shall be given to the parties, each
40 person who has a pending petition for intervention in the proceeding,
41 and any other person described by section 5(d) of this chapter. The
42 resulting order must be served on the persons to whom notice of the

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preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

SECTION 22. IC 10-11-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders. **The term includes the office of the inspector general.**

SECTION 23. IC 10-13-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) As used in this chapter, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.

(b) The term includes:

- (1) the office of the attorney general; and
- (2) the office of the inspector general.

SECTION 24. IC 15-1.5-10.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The trustees shall recommend an individual to be employed as executive director of the barn, subject to the approval of the governor. If the governor approves an individual recommended by the trustees, the trustees may employ the individual as executive director. If the governor does not approve an individual recommended by the trustees, the trustees shall submit another recommendation to the governor.

(b) The executive director employed under this section:

- (1) is the chief administrative officer of the barn; and
- (2) shall implement the policies of the trustees.

(c) The trustees may delegate any of the trustees' powers to the executive director. The trustees may make a delegation under this subsection through a resolution adopted by the trustees.

(d) ~~Notwithstanding IC 4-2-6-5,~~ The compensation for the executive director and other employees of the trustees may be paid in full or in part by the nonprofit entity established under section 10 of this chapter.

SECTION 25. IC 16-41-11-8 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A person who believes that this chapter or rules adopted under this chapter have been violated may file a complaint with the state department. A complaint must be in writing unless the violation complained of constitutes an emergency. The state department shall reduce an oral complaint to writing. The state department shall maintain the confidentiality of the person who files the complaint.

(b) The state department shall promptly investigate all complaints received under this section.

(c) The state department shall not disclose the name or identifying characteristics of the person who files a complaint under this section unless:

- (1) the person consents in writing to the disclosure; or
- (2) the investigation results in an administrative or judicial proceeding and disclosure is ordered by the administrative law judge or the court.

(d) The state department shall give a person who files a complaint under this section the opportunity to withdraw the complaint before disclosure.

(e) An employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employer **or the ethics commission**. However, an employee disciplined under this subsection is entitled to process an appeal of the disciplinary action under any procedure otherwise available to the employee by employment contract, collective bargaining agreement, or, if the employee is an employee of the state, a rule as set forth in IC 4-15-2-34 ~~and IC 4-15-2-35~~ **through IC 4-15-2-35.5**.

(f) The employer of an employee who files a complaint in good faith with the state department under this section may not, solely in retaliation for filing the complaint, do any of the following:

- (1) Dismiss the employee.
- (2) Withhold salary increases or employment related benefits from the employee.
- (3) Transfer or reassign the employee.
- (4) Deny a promotion that the employee would have received.
- (5) Demote the employee.

SECTION 26. IC 27-2-19-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "law enforcement agency" means an agency or a department of any level of government whose principal function is the

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1 apprehension of criminal offenders. **The term includes the office of**
 2 **the inspector general.**

3 SECTION 27. IC 33-39-1-2 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This section
 5 does not apply to a deputy prosecuting attorney appointed by a
 6 prosecuting attorney or **to** a special prosecutor. ~~appointed by a court.~~

7 (b) To be eligible to hold office as a prosecuting attorney, a person
 8 must be a resident of the judicial circuit that the person serves.

9 SECTION 28. IC 33-39-1-6 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Special
 11 prosecutors may be appointed ~~only~~ under this section **or in accordance**
 12 **with IC 4-2-7-7.**

13 (b) A circuit or superior court judge:

14 (1) shall appoint a special prosecutor if:

- 15 (A) any person other than the prosecuting attorney or the
 16 prosecuting attorney's deputy files a verified petition
 17 requesting the appointment of a special prosecutor; and
 18 (B) the prosecuting attorney agrees that a special prosecutor is
 19 needed;

20 (2) may appoint a special prosecutor if:

- 21 (A) a person files a verified petition requesting the
 22 appointment of a special prosecutor; and
 23 (B) the court, after:
 24 (i) notice is given to the prosecuting attorney; and
 25 (ii) an evidentiary hearing is conducted at which the
 26 prosecuting attorney is given an opportunity to be heard;
 27 finds by clear and convincing evidence that the appointment
 28 is necessary to avoid an actual conflict of interest or there is
 29 probable cause to believe that the prosecutor has committed a
 30 crime;

31 (3) may appoint a special prosecutor if:

- 32 (A) the prosecuting attorney files a petition requesting the
 33 court to appoint a special prosecutor; and
 34 (B) the court finds that the appointment is necessary to avoid
 35 the appearance of impropriety; and

36 (4) may appoint a special prosecutor if:

- 37 (A) an elected public official, who is a defendant in a criminal
 38 proceeding, files a verified petition requesting a special
 39 prosecutor within ten (10) days after the date of the initial
 40 hearing; and
 41 (B) the court finds that the appointment of a special prosecutor
 42 is in the best interests of justice.

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(c) Each person appointed to serve as a special prosecutor:

(1) must consent to the appointment; and

(2) must be:

(A) the prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor; or

(B) except as provided in subsection (d), a senior prosecuting attorney.

(d) A senior prosecuting attorney may be appointed in the county in which the senior prosecuting attorney previously served if the court finds that an appointment under this subsection would not create the appearance of impropriety.

(e) A person appointed to serve as a special prosecutor has the same powers as the prosecuting attorney of the county. However, the appointing judge shall limit scope of the special prosecutor's duties to include only the investigation or prosecution of a particular case or particular grand jury investigation.

(f) The court shall establish the length of the special prosecutor's term. If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-41-1-24), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. The report is a public record.

(g) If the special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid to the special prosecutor from the unappropriated funds of the appointing county; and

(2) may not exceed:

(A) a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit; and

(B) travel expenses and reasonable accommodation expenses actually incurred.

(h) If the special prosecutor is regularly employed as a full-time prosecuting attorney or deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which the special prosecutor regularly serves; and

(2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually incurred.

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(i) The combination of:

(1) the compensation paid to a senior prosecuting attorney under this chapter; and

(2) retirement benefits that the person appointed as a senior prosecuting attorney is receiving or entitled to receive;

may not exceed the minimum compensation to which a full-time prosecuting attorney is entitled under IC 33-39-6-5.

(j) A senior prosecuting attorney appointed under this chapter may not be compensated as senior prosecuting attorney for more than one hundred (100) calendar days in total during a calendar year.

SECTION 29. IC 33-39-2-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. A prosecuting attorney may appoint the inspector general or a deputy inspector general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving public misconduct.**

SECTION 30. IC 34-24-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The prosecuting attorney in a county in which any of the property is located may bring an action for the forfeiture of any property:

(1) used in the course of;

(2) intended for use in the course of;

(3) derived from; or

(4) realized through;

conduct in violation of IC 35-45-6-2.

(b) The inspector general may bring an action for forfeiture in accordance with IC 4-2-7-6 in a county where property that is:

(1) derived from; or

(2) realized through;

misfeasance, malfeasance, nonfeasance, misappropriation, fraud, or other misconduct that has resulted in a financial loss to the state is located.

~~(b)~~ **(c)** An action for forfeiture may be brought in any circuit or superior court in a county in which any of the property is located.

~~(c)~~ **(d)** Upon a showing by a preponderance of the evidence that: ~~the~~

(1) property in question described in subsection (a) was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of IC 35-45-6-2; or

(2) property described in subsection (b) was derived from or realized through conduct described in subsection (b);

the court shall, subject to the right, title, or interest of record of any other party in the property determined under section 4 of this chapter,

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(1) order the property forfeited to the state and (2) specify the manner of disposition of the property, including the manner of disposition if the property is not transferable for value.

(d) (e) The court shall order forfeitures and dispositions under this section:

(1) with due provision for the rights of innocent persons; and

(2) as provided under section 4 of this chapter.

SECTION 31. IC 34-24-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. When an action is filed under section 2 of this chapter, the prosecuting attorney **or the inspector general** may move for an order to have property subject to forfeiture seized by a law enforcement agency. The judge shall issue such an order upon a showing of probable cause to believe that:

(1) a violation of IC 35-45-6-2, ~~involving the property in question~~ **in the case of property described in section 2(a) of this chapter; or**

(2) **conduct described in section 2(b) of this chapter, in case of property described in section 2(b) of this chapter;** has occurred.

SECTION 32. IC 34-24-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Property subject to forfeiture under this chapter shall be seized by a law enforcement officer upon court order. Seizure may be made without a court order only if:

(1) the seizure is incident to a lawful arrest or search, or to an inspection under an administrative inspection warrant; or

(2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter (or IC 34-4-30.5 before its repeal).

(b) When property is seized under subsection (a), pending forfeiture and final disposition, the law enforcement officer making the seizure may:

(1) place the property under seal;

(2) remove the property to a place designated by the court; or

(3) require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(c) Property seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) is not subject to replevin, but is considered to be in the custody of the law enforcement officer making the seizure, subject only to order of the court. However, if a seizure of property is made in accordance with subsection (a), the prosecuting attorney **or the inspector general** shall bring an action for forfeiture under section 2

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of this chapter within:

(1) thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property; or

(2) one hundred eighty (180) days after the property is seized; whichever occurs first.

(d) If an action under subsection (c) is not filed within thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property, the claimant:

(1) is entitled to file a complaint seeking:

(A) replevin;

(B) foreclosure; or

(C) other appropriate remedy; and

(2) shall immediately obtain a hearing on the complaint as provided in subsection (f).

If an action is not filed within one hundred eighty (180) days after the date of the seizure, and the property has not been previously released to an innocent person under section 5 of this chapter (or IC 34-4-30.5-4.5 before its repeal), the law enforcement agency whose officer made the seizure shall return the property to its owner.

(e) If property is seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) and the property is a vehicle or real property, the prosecuting attorney **or the inspector general** shall serve, within thirty (30) days after the date the property is seized and as provided by the Indiana Rules of Trial Procedure, notice of seizure upon each person whose right, title, or interest is of record in the bureau of motor vehicles, in the county recorder's office, or other office authorized to receive or record vehicle or real property ownership interests.

(f) The person whose right, title, or interest is of record may at any time file a complaint seeking:

(1) replevin;

(2) foreclosure; or

(3) another appropriate remedy;

to which the state may answer in forfeiture within the appropriate statutory period. The court shall promptly set the matter for a hearing, and in the case of replevin or foreclosure, the court shall set the hearing as provided by the applicable statutory provisions.

SECTION 33. IC 34-24-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) If a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract did not know the property was the object of corrupt business influence **or conduct described in section 2(b) of this chapter**, the court shall determine whether the secured interest is

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1 equal to or in excess of the appraised value of the property.

2 (b) Appraised value is to be determined as of the date of judgment
3 on a wholesale basis by:

4 (1) agreement between the secured party and the prosecuting
5 attorney; or

6 (2) the inheritance tax appraiser for the county in which the action
7 is brought.

8 (c) If the amount due to the secured party is equal to or greater than
9 the appraised value of the property, the court shall order the property
10 released to the secured party.

11 (d) If the amount due the secured party is less than the appraised
12 value of the property, the holder of the interest may pay into the court
13 an amount equal to the owner's equity, which shall be the difference
14 between the appraised value and the amount of the lien, mortgage,
15 security interest, or interest under a conditional sales contract. Upon
16 payment, the state or unit, or both, shall relinquish all claims to the
17 property.

18 SECTION 34. IC 34-24-2-6 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) An aggrieved
20 person may, in addition to proceeding under section 4 of this chapter,
21 bring an action for injunctive relief from corrupt business influence in
22 a circuit or superior court in the county of the aggrieved person's
23 residence, or in a county where any of the affected property or the
24 affected enterprise is located. If the court finds, through a
25 preponderance of the evidence, that the aggrieved person is suffering
26 from corrupt business influence, the court shall make an appropriate
27 order for injunctive relief. This order must be made in accordance with
28 the principles that govern the granting of injunctive relief from
29 threatened loss or damage in other civil cases, except that a showing of
30 special or irreparable damage to the aggrieved person is not required.
31 The court may order injunctive relief only after the execution of a bond
32 by the aggrieved person for an injunction improvidently granted, in an
33 amount established by the court. In addition, the court may order a
34 temporary restraining order or a preliminary injunction, but only after
35 a showing of immediate danger of significant loss or damage to the
36 aggrieved person.

37 (b) An aggrieved person may bring an action against a person who
38 has violated IC 35-45-6-2 in a circuit or superior court in the county of
39 the aggrieved person's residence, or in a county where any of the
40 affected property or the affected enterprise is located, for damages
41 suffered as a result of corrupt business influence. Upon a showing by
42 a preponderance of the evidence that the aggrieved person has been

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1 damaged by corrupt business influence, the court shall order the person
 2 causing the damage through a violation of IC 35-45-6-2 to pay to the
 3 aggrieved person:

- 4 (1) an amount equal to three (3) times ~~his~~ **the person's** actual
- 5 damages;
- 6 (2) the costs of the action;
- 7 (3) a reasonable attorney's fee; and
- 8 (4) any punitive damages awarded by the court and allowable
- 9 under law.

10 (c) The defendant and the aggrieved person are entitled to a trial by
 11 jury in an action brought under this section (or IC 34-4-30.5-5 before
 12 its repeal).

13 (d) In addition to any rights provided under section 4 of this chapter,
 14 an aggrieved person has a right or claim to forfeited property or to the
 15 proceeds derived from forfeited property superior to any right or claim
 16 the state has in the same property or proceeds.

17 (e) If the state is an aggrieved person, the attorney general ~~has~~ **and**
 18 **the inspector general have** concurrent jurisdiction with the
 19 prosecuting attorney to bring an action under this section.

20 SECTION 35. IC 34-24-2-8 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A
 22 prosecuting attorney **or the inspector general** may retain an attorney
 23 to bring an action under this chapter.

24 (b) An attorney retained under this section is not required to be a
 25 deputy prosecuting attorney but must be admitted to the practice of law
 26 in Indiana.

27 SECTION 36. IC 35-41-1-17 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) "Law
 29 enforcement officer" means:

- 30 (1) a police officer, sheriff, constable, marshal, ~~or~~ prosecuting
- 31 attorney, **special prosecuting attorney, special deputy**
- 32 **prosecuting attorney, or the inspector general;**
- 33 (2) a deputy of any of those persons;
- 34 (3) an investigator for a prosecuting attorney **or for the inspector**
- 35 **general;**
- 36 (4) a conservation officer; or
- 37 (5) an enforcement officer of the alcohol and tobacco
- 38 commission.

39 (b) "Federal enforcement officer" means any of the following:

- 40 (1) A Federal Bureau of Investigation special agent.
- 41 (2) A United States Marshals Service marshal or deputy.
- 42 (3) A United States Secret Service special agent.

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- (4) A United States Fish and Wildlife Service special agent.
- (5) A United States Drug Enforcement Agency agent.
- (6) A Bureau of Alcohol, Tobacco, and Firearms agent.
- (7) A United States Forest Service law enforcement officer.
- (8) A United States Department of Defense police officer or criminal investigator.
- (9) A United States Customs Service agent.
- (10) A United States Postal Service investigator.
- (11) A National Park Service law enforcement commissioned ranger.
- (12) United States Department of Agriculture, Office of Inspector General special agent.
- (13) A United States Immigration and Naturalization Service special agent.
- (14) An individual who is:
 - (A) an employee of a federal agency; and
 - (B) authorized to make arrests and carry a firearm in the performance of the individual's official duties.

SECTION 37. IC 35-44-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person who:

- (1) confers, offers, or agrees to confer on a public servant, either before or after the public servant becomes appointed, elected, or qualified, any property except property the public servant is authorized by law to accept, with intent to control the performance of an act related to the employment or function of the public servant **or because of any official act performed or to be performed by the public servant, former public servant, or person selected to be a public servant;**
- (2) ~~being~~ is a public servant **and** solicits, accepts, or agrees to accept, either before or after ~~he becomes the public servant is~~ appointed, elected, or qualified, any property, except property ~~he~~ **that the public servant** is authorized by law to accept, with intent to control the performance of an act related to ~~his~~ **the** employment or function as a public servant **or because of any official act performed or to be performed by the public servant, former public servant, or person selected to be a public servant;**
- (3) confers, offers, or agrees to confer on a person any property, except property the person is authorized by law to accept, with intent to cause that person to control the performance of an act related to the employment or function of a public servant;
- (4) solicits, accepts, or agrees to accept any property, except

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property ~~he~~ **the person** is authorized by law to accept, with intent to control the performance of an act related to the employment or function of a public servant;

(5) confers, offers, or agrees to confer any property on a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, with intent that the person will fail to use ~~his~~ **the person's** best efforts in connection with that contest, event, or exhibition;

(6) ~~being~~ **is** a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, **and** solicits, accepts, or agrees to accept any property with intent that ~~he~~ **the person** will fail to use ~~his~~ **the person's** best efforts in connection with that contest, event, or exhibition;

(7) ~~being~~ **is** a witness or informant in an official proceeding or investigation **and** solicits, accepts, or agrees to accept any property, with intent to:

(i) **(A)** withhold any testimony, information, document, or thing;

(ii) **(B)** avoid legal process summoning ~~him~~ **the person** to testify or supply evidence; or

(iii) **(C)** absent himself **or herself** from the proceeding or investigation to which ~~he~~ **the person** has been legally summoned; or

(8) confers, offers, or agrees to confer any property on a witness or informant in an official proceeding or investigation, with intent that the witness or informant:

(i) **(A)** withhold any testimony, information, document, or thing;

(ii) **(B)** avoid legal process summoning the witness or informant to testify or supply evidence; or

(iii) **(C)** absent himself **or herself** from any proceeding or investigation to which the witness or informant has been legally summoned;

commits bribery, a Class C felony.

(b) It is no defense that the person whom the accused person sought to control was not qualified to act in the desired way.

SECTION 38. IC 35-44-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A public servant who:

(1) knowingly or intentionally performs an act that ~~he~~ **the public servant** is forbidden by law to perform;

(2) performs an act ~~he~~ **the public servant** is not authorized by law

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to perform, with intent to obtain any property for himself or herself;

(3) knowingly or intentionally solicits, accepts, or agrees to accept from ~~his an~~ appointee or employee any property other than what ~~he the public servant~~ is authorized by law to accept as a condition of continued employment;

(4) knowingly or intentionally acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of ~~his the public servant's~~ office that official action that has not been made public is contemplated;

(5) knowingly or intentionally fails to deliver public records and property in ~~his the public servant's~~ custody to ~~his the public servant's~~ successor in office when that successor qualifies; or

(6) knowingly or intentionally violates IC 36-6-4-17(b); commits official misconduct, a ~~Class A misdemeanor~~; **Class D felony**.

SECTION 39. IC 35-44-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) As used in this section, "pecuniary interest" has the meaning set forth in section 3(g) of this chapter.

(b) A person who knowingly or intentionally:

(1) obtains a pecuniary interest in a contract or purchase with an agency within one (1) year after separation from employment or other service with the agency; and

(2) is not a public servant for the agency but who as a public servant approved, negotiated, or prepared on behalf of the agency the terms or specifications of:

(A) the contract; or

(B) the purchase;

commits profiteering from public service, a ~~Class A infraction~~; **Class D felony**.

(c) This section does not apply to negotiations or other activities related to an economic development grant, loan, or loan guarantee.

(d) This section does not apply if the person receives less than two hundred fifty dollars (\$250) of the profits from the contract or purchase.

(e) It is a defense to a prosecution under this section that:

(1) the person was screened from any participation in the contract or purchase;

(2) the person has not received a part of the profits of the contract or purchase; and

(3) notice was promptly given to the agency of the person's

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1 interest in the contract or purchase.
 2 SECTION 40. THE FOLLOWING ARE REPEALED [EFFECTIVE
 3 UPON PASSAGE]: IC 4-2-6-3; IC 4-2-6-5.
 4 SECTION 41. [EFFECTIVE UPON PASSAGE] **IC 4-2-6-13,**
 5 **IC 4-2-6-14, IC 4-15-10-4, IC 35-44-1-1, IC 35-44-1-2, and**
 6 **IC 35-44-1-7, all as amended by this act, apply only to crimes**
 7 **committed after passage of this act.**
 8 SECTION 42. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1002, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 15.

Page 2, delete lines 1 through 31.

Page 5, line 18, delete "The members of the commission serve at the pleasure".

Page 5, delete line 19.

Page 5, line 26, after "chairman." insert "**chairperson.**".

Page 5, line 26, reset in roman "Each appointment".

Page 5, reset in roman line 27.

Page 5, line 28, reset in roman "filled by the governor for the unexpired term.".

Page 5, line 28, delete "chairperson.".

Page 13, line 18, delete "direct or indirect".

Page 13, line 42, delete "not later than".

Page 14, line 1, delete "thirty (30) days after the agency makes the contract".

Page 14, line 1, after "if" insert ", **not later than thirty (30) days after learning of the actual or prospective violation,**".

Page 16, between lines 8 and 9, begin a new paragraph and insert:

"(e) A written advisory opinion issued by the inspector general certifying that:

(1) employment of;

(2) representation by; or

(3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section."

Page 20, line 3, delete "or" and insert "**and**".

Page 23, line 21, delete "appoint" and insert "**recommend**".

Page 23, line 22, after "general" insert "**be appointed**".

Page 23, line 23, delete "(c)" and insert "**(h)**".

Page 23, line 23, delete "is authorized to" and insert "**may**".

Page 23, line 25, delete "appoint" and insert "**recommend**".

Page 23, line 25, after "general" insert "**be appointed**".

Page 23, between lines 31 and 32, begin a new paragraph and insert:

"(d) If the governor has recommended the appointment of the inspector general as a special prosecuting attorney, the inspector

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general shall file a notice with the chief judge of the court of appeals, stating:

- (1) that the governor has recommended that the inspector general be appointed as a special prosecutor;
- (2) the name of the county in which the crime that the inspector general intends to prosecute is alleged to have been committed; and
- (3) that the inspector general requests the chief judge to assign a court of appeals judge to determine whether the inspector general should be appointed as a special prosecuting attorney.

Upon receipt of the notice, the chief judge of the court of appeals shall assign a judge of the court of appeals from a district other than the district in which the crime is alleged to have been committed to determine whether the inspector general should be appointed as a special prosecuting attorney.

(e) The inspector general shall file a verified petition for appointment as a special prosecuting attorney with the court of appeals judge assigned under subsection (d). In the verified petition, the inspector general shall set forth why the inspector general should be appointed as a special prosecutor. The inspector general may support the verified petition by including relevant documents, transcripts, or written statements in support of the inspector general's position. The inspector general shall serve a copy of the verified petition, along with any supporting evidence, on the prosecuting attorney to whom the case was originally certified under subsection (a).

(f) The prosecuting attorney shall file a verified petition in support of or opposition to the inspector general's verified petition for appointment as a special prosecuting attorney not later than fifteen (15) days after receipt of the inspector general's verified petition for appointment as a special prosecuting attorney.

(g) Upon a showing of particularized need, the court of appeals judge may order the verified petitions filed by the inspector general and the prosecuting attorney to be confidential.

(h) After considering the verified petitions, the court of appeals judge may appoint the inspector general as a special prosecuting attorney if the judge finds that:

- (1) one (1) of the conditions set forth in subsection (b)(1) is met; and
- (2) appointment of the inspector general as a special prosecuting attorney is in the best interests of justice.

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In making its determination under this subsection, the court of appeals judge shall consider only the arguments and evidence contained in the verified petitions."

Page 23, line 32, delete "(d)" and insert "(i)".

Page 23, line 32, delete "(f)" and insert "(k)".

Page 23, line 35, delete "governor" and insert **"court of appeals judge"**.

Page 24, line 4, delete "governor" and insert **"court of appeals judge"**.

Page 24, line 7, delete "(e)" and insert "(j)".

Page 24, line 16, delete "(f)" and insert "(k)".

Page 24, line 21, delete "(g)" and insert "(l)".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1002 as introduced.)

BUCK, Chair

Committee Vote: yeas 6, nays 5.

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